

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2014 Supplement

Including Acts of the 2014 Regular Session of the General Assembly

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*and*

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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2014 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 21, 2014. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 21, 2014.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
John Marshall Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2014 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2014 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 24

## EVIDENCE

Chap.

5. Privileges, 24-5-501 through 24-5-509.
12. Medical and Other Confidential Information, 24-12-1 through 24-12-31.

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**Law reviews.** — For article, “The Best Evidence Rule Made Better: A Glimpse into Georgia’s New Evidence Code,” see 19 Ga. St. B.J. 12 (Aug. 2013). For annual survey on evidence law, see 64 Mercer L. Rev. 929 (2013).

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## CHAPTER 1

### GENERAL PROVISIONS

#### ARTICLE 1

#### PURPOSE AND APPLICABILITY OF RULES OF EVIDENCE

#### **24-1-1. Purpose and construction of the rules of evidence.**

**Law reviews.** — For article, “Symposium on Evidence Reform: Searching for Truth in the American Law of Evidence and Proof,” see 47 Ga. L. Rev. 657 (2013). For article, “Symposium

#### **24-1-104. Preliminary questions.**

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

**CHAPTER 2**

**JUDICIAL NOTICE**

**ARTICLE 1**

**ADJUDICATIVE FACTS**

**24-2-201. Judicial notice of adjudicative facts.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**General Consideration**

**Cited** in *Sherman v. City of Atlanta*, 293 Ga. 169, 744 S.E.2d 689 (2013).

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**CHAPTER 3**

**PAROL EVIDENCE**

**24-3-1. Parol evidence contradicting writing inadmissible generally.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**EVIDENCE ADMISSIBLE**

**4. OTHER AGREEMENTS**

**General Consideration**

**Cited** in *Thomas v. Emory Clinic, Inc.*, 321 Ga. App. 457, 739 S.E.2d 138 (2013); *Bates v. State*, 322 Ga. App. 319, 744 S.E.2d 841 (2013).

**Evidence Admissible**

**4. Other Agreements**

**Life insurance beneficiary designation form.**

With regard to the defendant’s murder

conviction, the trial court properly denied the defendant’s motion for a new trial because the victim’s out-of-court statements to the victim’s brother were admissible under the necessity exception set forth in O.C.G.A. § 24-3-1(b); therefore, the defendant’s counsel was not deficient because there is no deficient performance when an attorney fails to object to admissible evidence. *Bulloch v. State*, 293 Ga. 179, 744 S.E.2d 763 (2013).

**24-3-2. Proof of unwritten portions of contract admissible where not inconsistent.**

**JUDICIAL DECISIONS**

**Cited** in *Bulloch v. State*, 293 Ga. 179, 744 S.E.2d 763 (2013); *Carter v. State*, 324 Ga. App. 118, 749 S.E.2d 404 (2013).

**24-3-3. Contemporaneous writings explaining each other; parol evidence explaining ambiguities.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**General Consideration**

**Cited** in *Dulcio v. State*, 292 Ga. 645, 740 S.E.2d 574 (2013); *Johnson v. State*, 323 Ga. App. 65, 744 S.E.2d 921 (2013).

**24-3-5. Known usage.**

**JUDICIAL DECISIONS**

**Cited** in *Dulcio v. State*, 292 Ga. 645, 740 S.E.2d 574 (2013); *Garcia-Carrillo v. State*, 322 Ga. App. 439, 746 S.E.2d 137 (2013); *Hernandez-Garcia v. State*, 322 Ga. App. 455, 745 S.E.2d 706 (2013); *Folston v. State*, 294 Ga. 778, 755 S.E.2d 803 (2014).

**24-3-10. Explanation of blank endorsements.**

**JUDICIAL DECISIONS**

**Cited** in *Rai v. Reid*, 294 Ga. 270, 751 S.E.2d 821 (2013).

## CHAPTER 4

## RELEVANT EVIDENCE AND ITS LIMITS

## 24-4-401. “Relevant evidence” defined.

## JUDICIAL DECISIONS

## ANALYSIS

## RELEVANT EVIDENCE IN CIVIL CASES

## RELEVANT EVIDENCE IN CRIMINAL CASES

**Relevant Evidence in Civil Cases**

**Evidence in malicious prosecution case.** — Malicious prosecution case was remanded to the trial court because the trial court, after concluding that the plaintiff’s past criminal history was relevant, should have thereafter considered whether the plaintiff’s prior arrests nevertheless should be excluded because of their inherently prejudicial nature or because those arrests potentially would confuse or mislead the jury. *Rivers v. K-Mart Corp.*, 321 Ga. App. 788, 743 S.E.2d 464 (2013).

**Relevant Evidence in Criminal Cases**

**Evidence not relevant to intent.** — Trial court erred in excluding proffered evidence regarding how the detention center handled the defendant and the other detainee after the fight, because the pro-

ffered evidence dealt with administrative actions or decisions that occurred after the defendant struck the officer and those actions or decisions were not part of the circumstances connected with the act for which the defendant was accused and, thus, was not relevant under former O.C.G.A. § 24-2-1 to the issue of intent. *Hickey v. State*, 325 Ga. App. 496, 753 S.E.2d 143 (2013) (decided under former O.C.G.A. § 24-2-4).

**Signs and fliers relevant to show defendant’s bent of mind.** — Images and language incorporated into the sign and fliers that the defendant displayed or distributed concerning the defendant’s child’s mother, the victim, at or near the victim’s workplace demonstrated the state of the relationship between the defendant and the victim, and were “highly relevant” to show the defendant’s abusive bent of mind toward the victim. *Hudson v. State*, 321 Ga. App. 702, 742 S.E.2d 516 (2013).

## 24-4-402. Relevant evidence generally admissible; irrelevant evidence not admissible.

## JUDICIAL DECISIONS

## ANALYSIS

## IRRELEVANT EVIDENCE IN CIVIL CASES

**Irrelevant Evidence in Civil Cases**

**Evidence in malicious prosecution case.** — Malicious prosecution case was remanded to the trial court because the trial court, after concluding that plaintiff’s past criminal history was relevant, should have thereafter considered

whether the plaintiff’s prior arrests nevertheless should be excluded because of their inherently prejudicial nature or because those arrests potentially would confuse or mislead the jury. *Rivers v. K-Mart Corp.*, 321 Ga. App. 788, 743 S.E.2d 464 (2013).

**24-4-403. Exclusion of relevant evidence on the grounds of prejudice, confusion, or waste of time.**

**JUDICIAL DECISIONS**

**Prejudicial impact outweighed probative value in child abuse case.** — While the physician's opinion regarding the victim's hymen being intact and then later not intact was compelling evidence that the victim had been sexually abused, it was much less probative of the question

of whether it was the defendant who had molested the victim because the defendant lacked access to the victim during the relevant time period and, thus, should not have been admitted into evidence. *State v. Chapman*, 322 Ga. App. 82, 744 S.E.2d 77 (2013).

**24-4-404. Character evidence not admissible to prove conduct; exceptions; other crimes.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**CRIMINAL CASES**

1. IN GENERAL
2. CHARACTER
3. SPECIFIC CRIMES
  - a. ASSAULT, BATTERY, AND HOMICIDE CRIMES
  - b. ROBBERY, BURGLARY, AND THEFT CRIMES

**Criminal Cases**

**1. In General**

**Past physical and verbal abuse admissible.** — Evidence of the defendant's past physical and verbal abuse of the victim was admissible as proof of the relationship between the defendant and the victim and to show the defendant's motive and intent. *Faircloth v. State*, 293 Ga. 134, 744 S.E.2d 52 (2013).

**Evidence of other conduct or crimes was admissible in the following cases.**

Since the prior incidents and the incident for which the defendant was being prosecuted all involved the defendant or an accomplice being in employee-only areas when the stores were open and employees were present, the similarities were adequate to satisfy the state's burden of showing a sufficient connection between similar offenses and the instant offense. *Spinks v. State*, 322 Ga. App. 387, 745 S.E.2d 653 (2013).

**2. Character**

**Evidence of motive.**

Trial court did not violate former O.C.G.A. § 24-2-2 in admitting evidence of the defendant's extramarital relationship with another woman as it showed that the defendant had a motive to conceal the defendant's extramarital affair with the victim not only from the defendant's wife, but from the other woman. *Washington v. State*, 294 Ga. 560, 755 S.E.2d 160 (2014) (decided under former O.C.G.A. § 24-2-2).

**3. Specific Crimes**

**a. Assault, Battery, and Homicide Crimes**

**Similar transaction evidence admissible.**

Evidence relating to a North Carolina traffic stop and seizure of currency was properly admissible as the stop, also involving both defendants, a car registered in Massachusetts, with dark tinted win-

**Criminal Cases (Cont'd)**  
**3. Specific Crimes (Cont'd)**  
**a. Assault, Battery, and Homicide Crimes (Cont'd)**

dows, a single key in the ignition, religious insignias throughout, and a hidden compartment with shrink-wrapped items, was sufficiently similar that proof of that incident tended to prove the current incident. *Betancourt v. State*, 322 Ga. App. 201, 744 S.E.2d 419 (2013).

**b. Robbery, Burglary, and Theft Crimes**

**Admission of similar transaction evidence proper.**  
Trial court did not abuse the court's

discretion by allowing the state to introduce the evidence of a similar robbery to show the defendant's intent and modus operandi or course of conduct, which were legitimate purposes at the time of trial, because the state presented sufficient evidence that the defendant committed the other robbery, which involved robbing a restaurant night manager at closing time while concealing the face with clothing. *Martin v. State*, 324 Ga. App. 252, 749 S.E.2d 815 (2013).

**24-4-405. Methods of proving character.**

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

**24-4-408. Compromises and offers to compromise.**

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

**24-4-412. Complainant's past sexual behavior not admissible in prosecutions for certain sexual offenses; exceptions.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**RAPE**

**Rape**

**Exclusion of previous consensual sexual relationship.** — In a case decided under former O.C.G.A. § 24-2-3, the trial court did not err in granting the state's motion in limine to exclude evidence that the defendant and the victim had a prior

sexual relationship as there was no way, given the circumstances of the episode, that the defendant reasonably believed the victim consented to sexual intercourse, even if the victim had previously done so. *Johnson v. State*, 322 Ga. App. 612, 744 S.E.2d 903 (2013) (decided under former O.C.G.A. § 24-2-3).

## CHAPTER 5

## PRIVILEGES

Sec.

24-5-501. Certain communications privileged.

between law enforcement officers and peer counselors.

24-5-510. Privileged communications be-

**24-5-501. Certain communications privileged.**

(a) There are certain admissions and communications excluded from evidence on grounds of public policy, including, but not limited to, the following:

- (1) Communications between husband and wife;
- (2) Communications between attorney and client;
- (3) Communications among grand jurors;
- (4) Secrets of state;
- (5) Communications between psychiatrist and patient;
- (6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;
- (7) Communications between a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor and patient;
- (8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this subsection; and
- (9) Communications between accountant and client as provided by Code Section 43-3-29.

(b) As used in this Code section, the term:

(1) "Psychotherapy" means the employment of psychotherapeutic techniques.

(2) "Psychotherapeutic techniques" shall have the same meaning as provided in Code Section 43-10A-3. (Code 1981, § 24-5-501, enacted by Ga. L. 2011, p. 99, § 2/HB 24; Ga. L. 2014, p. 136, § 2-1/HB 291.)

The 2014 amendment, effective July 1, 2014, substituted “Code Section 43-3-29” for “Code Section 43-3-32” in paragraph (a)(9).

## JUDICIAL DECISIONS

### ANALYSIS

#### COMMUNICATIONS BETWEEN ATTORNEY AND CLIENT

##### 11. APPLICATION IN OTHER SPECIFIC ACTIONS

#### Communications Between Attorney and Client

##### 11. Application in Other Specific Actions

##### Attorney attacking judgment.

Attorney-client privilege applies to communications between a law firm’s attorneys and its in-house counsel regarding a client’s potential claims against the firm when: (1) there is a genuine

attorney-client relationship between the firm’s lawyers and in-house counsel; (2) the communications in question were intended to advance the firm’s interests in limiting exposure to liability rather than the client’s interests in obtaining sound legal representation; (3) the communications were conducted and maintained in confidence; and (4) no exception to the privilege applies. *St. Simons Waterfront, LLC v. Hunter, Maclean, Exley & Dunn, P.C.*, 293 Ga. 419, 746 S.E.2d 98 (2013).

#### 24-5-505. Party or witness privilege.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

Cited in *State v. Wakefield*, 324 Ga. App. 587, 751 S.E.2d 199 (2013).

#### 24-5-510. Privileged communications between law enforcement officers and peer counselors.

(a) As used in this Code section, the term:

(1) “Client” means a law enforcement employee or a law enforcement officer’s immediate family.

(2) “Immediate family” means the spouse, child, stepchild, parent, or stepparent.

(3) “Peer counselor” means an employee of a law enforcement agency who has received training to provide emotional and moral support to a client and was designated by a sheriff, police chief, or other head of a law enforcement agency to counsel clients.

(b) Except as provided in subsection (c) of this Code section, communications between a client and a peer counselor shall be privileged. A peer counselor shall not disclose any such communications made to him

or her and shall not be competent or compellable to testify with reference to any such communications in any court.

(c) The privilege created by subsection (b) of this Code section shall not apply when:

- (1) The disclosure is authorized by the client, or if the client is deceased, by his or her executor or administrator, and if an executor or administrator is not appointed, by the client’s next of kin;
- (2) Compelled by court order;
- (3) The peer counselor was an initial responding officer, witness, or party to an act that is the subject of the counseling;
- (4) The communication was made when the peer counselor was not performing official duties; or
- (5) The client is charged with a crime.

(d) The privilege created by this Code section shall not be grounds to fail to comply with mandatory reporting requirements as set forth in Code Section 19-7-5 or Chapter 5 of Title 30, the “Disabled Adults and Elder Persons Protection Act.” (Code 1981, § 24-5-510, enacted by Ga. L. 2014, p. 339, § 1/HB 872.)

**Effective date.** — This Code section became effective July 1, 2014.

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**CHAPTER 6**

**WITNESSES**

**ARTICLE 1**

**GENERAL PROVISIONS**

**24-6-606. Juror as witness.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**General Consideration**

**Cited** in Ford Motor Co. v. Conley, 294 Ga. 530, 2014 Ga. LEXIS 131 (2014).

**24-6-607. Who may impeach.****JUDICIAL DECISIONS****ANALYSIS****EXAMINATION OF OWN WITNESS****Examination of Own Witness****Use of inconsistent prior statements.**

Because the prosecuting attorney laid a proper foundation for a witness's prior inconsistent statement by questioning the witness about the circumstances of the witness's earlier statement to investigators and affording the witness an oppor-

tunity to admit, explain, or deny the prior contradictory statement about not seeing a gun during the rough play between the defendant and others prior to the murders, the trial court did not abuse the court's discretion when the court admitted the witness's earlier statement. *Edwards v. State*, 293 Ga. 612, 748 S.E.2d 870 (2013).

**24-6-609. Impeachment by evidence of conviction of a crime.****JUDICIAL DECISIONS****Federal interpretation of balancing tests.**

In determining whether to admit a prior conviction against a defendant for impeachment purposes, a court should consider: (1) the impeachment value of the crime; (2) the time of the conviction and the defendant's subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *Waye v. State*, 2014 Ga. App. LEXIS 143 (Mar. 13, 2014).

**On-the-record finding required.**

Trial court erred by failing to make an on-the-record finding of whether the probative value of admitting the defendant's 1991 conviction substantially outweighed its prejudicial effect, and to enter express findings as to whether the probative value of defendant's 1987 conviction substantially outweighed its prejudicial effect. *Waye v. State*, 2014 Ga. App. LEXIS 143 (Mar. 13, 2014).

Trial court is required to make a different determination regarding a prior felony conviction that is older than ten years and

evidence of such a conviction is not admissible unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. *Waye v. State*, 2014 Ga. App. LEXIS 143 (Mar. 13, 2014).

Trial court must make an on-the-record finding of the specific facts and circumstances upon which the court relies in determining that the probative value of a prior conviction that is more than ten years old substantially outweighs its prejudicial effect before admitting evidence of the conviction for impeachment purposes. *Waye v. State*, 2014 Ga. App. LEXIS 143 (Mar. 13, 2014).

In considering the admissibility of prior convictions less than ten years old, a trial court must make an on-the-record finding that the probative value of admitting the conviction substantially outweighs its prejudicial effect, but is not required to list the specific factors the court considered in making the court's decision. *Waye v. State*, 2014 Ga. App. LEXIS 143 (Mar. 13, 2014).

24-6-611. Mode and order of witness interrogation and presentation.

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

JUDICIAL DECISIONS

ANALYSIS

SCOPE OF CROSS-EXAMINATION

2. DISCRETION OF JUDGE

EXAMINATION OF OPPOSITE PARTY

1. IN GENERAL

Scope of Cross-Examination

2. Discretion of Judge

Regulation of scope of cross-examination, etc.

Because the trial court did not abuse the court's discretion in regulating cross-examination by instructing defense counsel to be clear with counsel's question, the defendant's constitutional right of confrontation was not violated. *Baker v. State*, 293 Ga. 811, 750 S.E.2d 137 (2013).

Examination of Opposite Party

1. In General

**Impeachment on drug use.** — Trial court did not err by prohibiting the defen-

dant from questioning the witness about prior drug use in general as the defendant was permitted to ask whether the witness was under the influence at the time the witness saw the two men outside the victim's house. *Boothe v. State*, 293 Ga. 285, 745 S.E.2d 594 (2013) (decided under former O.C.G.A. § 24-9-62).

24-6-613. Prior statements of witnesses.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

ADMISSIBILITY OF STATEMENT

1. IN GENERAL

General Consideration

**Cited in** *Ryans v. State*, 293 Ga. 238, 744 S.E.2d 759 (2013).

Admissibility of Statement

1. In General

Pre-trial statements.

Because the prosecuting attorney laid a proper foundation for a witness's prior

inconsistent statement by questioning the witness about the circumstances of the witness's earlier statement to investigators and affording the witness an opportunity to admit, explain, or deny the prior contradictory statement about not seeing a gun during the rough play between the defendant and others prior to the murders, the trial court did not abuse the court's discretion when the court admitted the witness's earlier statement. *Edwards*

Admissibility of Statement (Cont'd)  
1. In General (Cont'd)

v. State, 293 Ga. 612, 748 S.E.2d 870 (2013).

24-6-615. Exclusion of witnesses.

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

**Witness sequestration rule violated in driving under the influence case.** — Trial court erred in denying the defendant's request to invoke the rule of sequestration and, thus, the defendant was granted a new trial with regard to the defendant's driving under the influence

conviction because the trial court did not use the court's discretion to decide that a witness could remain to assist the state or to allow testimony despite an infraction of the rule; the court simply held, incorrectly, that the rule of sequestration did not apply until the first witness was called for trial. *Smith v. State*, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

CHAPTER 7

OPINIONS AND EXPERT TESTIMONY

24-7-701. Lay witness opinion testimony.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION  
OPINION TESTIMONY ADMISSIBLE  
2. SPECIFIC EXAMPLES

General Consideration

**Statement not an opinion.**  
Investigator's testimony that early in the interrogation the defendant was playing games and did not want to give the police the full truth was admissible as the challenged evidence was not inadmissible opinion evidence under former O.C.G.A.

§ 24-9-65, but was relevant as to why the interview lasted several hours in response to a defense implication that the defendant was subjected to an overly burdensome interrogation. *Jordan v. State*, 293 Ga. 619, 748 S.E.2d 876 (2013) (decided under former O.C.G.A. § 24-9-65).  
**Cited in** *State v. Cooper*, 324 Ga. App.

32, 749 S.E.2d 35 (2013).

### Opinion Testimony Admissible

#### 2. Specific Examples

**Value of trust assets.** — Probate court did not err in allowing a co-executor's husband to testify to an opinion about the value of real property contributed to the trust investments at issue because one

need not be an expert or dealer in the article in question to testify to its value if an opportunity for forming a correct opinion has been had, and the husband had testified that to the familiarity with the properties at issue and with comparable properties, which were considered in reaching the opinion. In re Estate of Hubert, 325 Ga. App. 276, 750 S.E.2d 511 (2013).

### 24-7-702. Expert opinion testimony in civil actions; medical experts; pretrial hearings; precedential value of federal law.

**Law reviews.** — For article, "Symposium on Evidence Reform: The Curious Case of Differing Literary Emphases: The Contrast Between the Use of Scientific

Publications at Pretrial Daubert Hearings and at Trial," see 47 Ga. L. Rev. 837 (2013). For annual survey on product liability, see 65 Mercer L. Rev. 221 (2013).

## JUDICIAL DECISIONS

**Interpretation of paragraph (c)(2).** — Georgia Supreme Court views the requirements of O.C.G.A. § 24-7-702 subparagraphs (c)(2)(A) and (c)(2)(B) as together being conjunctive with subparagraphs (c)(2)(C) and (c)(2)(D) and, thus, holds that, to be qualified to testify as an expert, the proffered witness must be a member of the same profession as the defendant whose conduct is at issue, or be a physician satisfying the supervision requirements of subparagraph (c)(2)(D). *Hankla v. Postell*, 293 Ga. 692, 749 S.E.2d 726 (2013).

#### No error in excluding expert testimony.

Trial court did not err in the court's determinations that plaintiffs' expert was not qualified to serve as an expert in the case and that the expert's opinions were not sufficiently reliable on the question of whether a gas company was negligent because the expert failed to cite any treatise or authority supporting the belief that, under readily ascertainable and verifiable standards recognized in the field, the gas company's actions in connection with the explosion fell below the standard of care. *Anderson v. Atlanta Gas Light Co.*, 324 Ga. App. 801, 751 S.E.2d 589 (2013).

**Standard for admissibility of expert testimony** was governed by former

O.C.G.A. § 24-9-67.1(b) (see now O.C.G.A. § 24-7-702), which provided if scientific, technical, or other specialized knowledge would assist the trier of fact in any cause of action to understand the evidence or to determine a fact in issue, a witness qualified as an expert may testify thereto in the form of an opinion or otherwise, if: (1) the testimony was based upon sufficient facts or data which were or will be admitted into evidence at the hearing or trial; (2) the testimony was the product of reliable principles and methods; and (3) the witness had applied the principles and methods reliably to the facts of the case. *Levine v. SunTrust Robinson Humphrey*, 321 Ga. App. 268, 740 S.E.2d 672 (2013) (decided under former O.C.G.A. § 24-9-67.1).

#### Qualification as an expert not satisfied.

Plaintiff's witness was not qualified to testify as an expert in a medical malpractice claim based on injuries and the death of an elderly patient because the witness was completely lacking in recent experience working with the type of patient at issue in the case since the witness never worked in a mental health unit or at any type of extended-stay facility housing elderly patients, and over the prior nine years, the witness had worked in neonatal

or pediatric facilities, except for one year when the witness was working in intensive care units. *Sanders v. United States*, No. 109-164, 2011 U.S. Dist. LEXIS 155970 (S.D. Ga. Aug. 26, 2011).

**Same profession requirement applies to medical experts.** — Georgia Supreme Court construes the same profession requirement to apply to all proffered medical experts, even those experienced in the procedure at issue through active practice. *Hankla v. Postell*, 293 Ga. 692, 749 S.E.2d 726 (2013).

Appellate court properly held that a trial court abused the court's discretion by allowing an obstetrician/gynecologist to testify as an expert witness regarding a nurse midwife's treatment rendered to a patient because the obstetrician/gynecologist was neither a member of the same profession as the midwife nor supervised midwives as required under O.C.G.A. § 24-7-702. *Hankla v. Postell*, 293 Ga. 692, 749 S.E.2d 726 (2013).

**Officer qualified as expert on gangs.** — Police officer was properly qualified as an expert in gang identity and investigation as the officer was a state certified gang investigator; that the officer was trained in gang identity and investigation; that the officer trained new hires about gangs; and that the officer regularly monitored six Clayton County-based gangs, and was knowledgeable about the neighborhoods in which the gangs operated. The officer also testified that the officer knew the colors associated with the defendant's gang and had seen photographs of their gang signs. *Burgess v. State*, 292 Ga. 821, 742 S.E.2d 464 (2013).

**Expert found not qualified to render opinion.**

Since the plaintiff's witness was not qualified to testify as an expert in a medical malpractice claim based on injuries and the death of an elderly patient, in any event, the witness was not competent to testify based upon the witness's sheer lack of knowledge regarding fall prevention because the witness never authored a falls policy and the witness's knowledge of those policies was strictly limited to the policy in effect at the witness's place of employment, the witness had no knowledge of the Morse Fall Scale, which was

the method of fall risk assessment utilized in this case, prior to being retained, and the witness admitted in deposition that the witness did not rely on any textbooks or teachings to base the witness's opinions and that the witness performed no literary searches prior to forming the witness's opinion. *Sanders v. United States*, No. 109-164, 2011 U.S. Dist. LEXIS 155970 (S.D. Ga. Aug. 26, 2011).

**Expert qualified.** — Trial court erred in granting the doctor's motion in limine to exclude the testimony of the patient's expert on the grounds that the expert was not qualified to provide an expert opinion on hysteroscopic removal of fibroids and that the expert's testimony was speculative as the expert had significant experience in removing polyps through hysteroscopic procedures and the removal of fibroids via hysteroscopy was not markedly different from removal of polyps via that procedure. *Cartledge v. Montano*, 325 Ga. App. 322, 750 S.E.2d 772 (2013).

**Expert allowed to testify.**

In a case decided under former O.C.G.A. § 24-9-67.1, a doctor was properly qualified as an expert since the doctor acted as a consultant on the causation of pulmonary embolisms and consulted emergency room physicians about some of the patient's tests and researched the issue. *Bonds v. Nesbitt*, 322 Ga. App. 852, 747 S.E.2d 40 (2013) (decided under former O.C.G.A. § 24-9-67.1).

Trial court did not abuse the court's discretion by admitting the expert testimony proffered by the mortgagee because it was sufficient; competent evidence supported the finding that the foreclosure sale should be confirmed and provided proof of the true market value as of the date of the foreclosure sale. *Powder Springs Holdings, LLC v. RL BB ACQ II-GA PSH, LLC*, 325 Ga. App. 694, 754 S.E.2d 655 (2014).

Appraisal expert's testimony as to the value of foreclosed property at a confirmation proceeding did not violate former O.C.G.A. § 24-9-67.1(b) because the witness was certified as an appraiser in Georgia and had extensive experience, and the expert's conclusions as to the lot purchase agreement and buildability of certain lots were subject to cross-examination. The

trial court, sitting without a jury, was not required to undertake a Daubert analysis of the expert's testimony. *Harper v. Ameris Bank*, 755 S.E.2d 872, 2014 Ga. App. LEXIS 122 (2014) (decided under former O.C.G.A. § 24-9-67.1).

**Business valuation expert should have testified.** — In a negligence and breach of trust action, the special master erred by excluding the expert testimony regarding the value of the plaintiff because the expert undertook the exact type of analysis as all other valuation special-

ists utilize in valuing a business enterprise when public information is not available, and the opinion was relevant for the jury to determine, in conjunction with other testimony and evidence, the amount of damages that the defendant's alleged actions may have caused, which necessarily required consideration of opinion evidence as to the value of the business. *Levine v. SunTrust Robinson Humphrey*, 321 Ga. App. 268, 740 S.E.2d 672 (2013) (decided under former O.C.G.A. § 24-9-67.1).

24-7-704. Ultimate issue opinion.

JUDICIAL DECISIONS

**Cited in** *State v. Cooper*, 324 Ga. App. 32, 749 S.E.2d 35 (2013).

24-7-707. Expert opinion testimony in criminal proceedings.

**Law reviews.** — For article, "Symposium on Evidence Reform: A Tale of Two Dauberts," see 47 Ga. L. Rev. 889 (2013).

JUDICIAL DECISIONS

ANALYSIS

ILLUSTRATIONS

- 1. OPINIONS ADMISSIBLE
- 3. WITNESS QUALIFIED AS EXPERT

Illustrations

1. Opinions Admissible

**Child abuse accommodation syndrome.** — Expert testimony by a licensed psychologist regarding child abuse accommodation syndrome was properly admitted because the expert testified regarding how the victim's demeanor was consistent with having been sexually abused and not whether the victim was telling the truth. *Haithcock v. State*, 320 Ga. App. 886, 740 S.E.2d 806 (2013).

**Officer is an expert on narcotics investigations.**

Trial court did not abuse the court's discretion during the defendant's trial for possession of cocaine with the intent to distribute in allowing the arresting officer to testify as an expert witness on the issue

of the defendant's intent to distribute crack cocaine because the officer had over 900 hours of specialized training as a narcotics officer, was familiar with how crack cocaine was typically packaged and sold, and had made numerous drug-related arrests, at least 50 of which involved crack cocaine. Further, the officer's testimony was relevant to the issue of whether the defendant possessed the cocaine with the intent to distribute the cocaine and was within the scope of the officer's expertise. *Thomas v. State*, 321 Ga. App. 214, 741 S.E.2d 298 (2013).

3. Witness Qualified as Expert

**Forensic analyst of telephone records.** — Trial court did not abuse the court's discretion in qualifying the forensic analyst as an expert or in admitting

**Illustrations (Cont'd)**  
**3. Witness Qualified as Expert (Cont'd)**

the forensic analyst's testimony regarding the telephone calls between those involved in the drug transactions because the forensic analyst was examined extensively on specific training as an analyst of telephone records and the specialized

computer programs used in law enforcement data compilation, and because the correlation and analysis of large numbers of cellular telephone calls, using specialized computer programs and other tools and resources specific to forensic analysis, was a matter beyond the ken of the average layperson. *Maldonado v. State*, 325 Ga. App. 41, 752 S.E.2d 112 (2013).

**CHAPTER 8**

**HEARSAY**

**ARTICLE 1**

**GENERAL PROVISIONS**

**24-8-801. Definitions.**

**Law reviews.** — For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**ADMISSIBILITY**

**2. ORIGINAL EVIDENCE**

**DECLARATIONS OF CONSPIRATORS**

**2. APPLICATION**

**4. PENDENCY OF CRIMINAL PROJECT**

**a. IN GENERAL**

**General Consideration**

**Statements made by the declarants themselves are not hearsay.** *C & R Fin. Lenders, LLC v. State Bank & Trust Co.*, 320 Ga. App. 660, 740 S.E.2d 371 (2013).

**Latent fingerprint card not hearsay.** — Trial court did not err in overruling defendant's hearsay objection to the entry into evidence of a latent fingerprint card, which was identified by an officer other than the one who took the impression, because the card at issue simply showed an image of part of a window with fingerprints thereon, and it did not con-

tain any representations or conclusions of a third party; thus, neither the testimony of the officer, nor the latent fingerprint card, was hearsay. *Bates v. State*, 322 Ga. App. 319, 744 S.E.2d 841 (2013).

**Cited in** *Ryans v. State*, 293 Ga. 238, 744 S.E.2d 759 (2013); *Carter v. State*, 324 Ga. App. 118, 749 S.E.2d 404 (2013).

**Admissibility**

**2. Original Evidence**

**Fact within witness's personal knowledge.** — Questions to a witness as

to whether witness had been indicted by a grand jury for the shooting for which defendant was being tried and whether the grand jury had declined to indict witness did not elicit hearsay because the questions asked for facts that were within the witness's personal knowledge. *Bell v. State*, 294 Ga. 443, 754 S.E.2d 327 (2014).

**Hearsay issue critical in medical malpractice case.** — In a medical malpractice case, the trial court committed reversible error by finding that the patient waived a hearsay objection as to a defense pathologist's deposition testimony because the patient had the right to object to the testimony at trial and the testimony was inadmissible hearsay entitling the patient to a new trial since it was not harmless error in that it was critical in the case because the evidence directly addressed the core disputed issue of whether the clinic's neurosurgeon left an excessive amount of cotton in the patient's brain. *Thomas v. Emory Clinic, Inc.*, 321 Ga. App. 457, 739 S.E.2d 138 (2013).

## Declarations of Conspirators

### 2. Application

**Declarations of coconspirator admissible.**

Testimony by the second defendant's girlfriend that the second defendant told the girlfriend that the first defendant had shot a man while the defendants were breaking into cars was admissible under the co-conspirator exception to the hear-

say rule. *Billings v. State*, 293 Ga. 99, 745 S.E.2d 583 (2013).

Trial court did not err in allowing into evidence a co-conspirator's hearsay testimony regarding the statement that the defendant made about having to do something just before the murder because the statement was properly admitted into evidence as a declaration against the defendant from a co-conspirator involved in the murder. *Folston v. State*, 294 Ga. 778, 755 S.E.2d 803 (2014).

Statements coincident made to another person in an audiotaped conversation were admissible under former O.C.G.A. § 24-3-5 because the statements were made after the shooting and while the identity of those complicit therein were still being concealed. *Hassel v. State*, 755 S.E.2d 134, 2014 Ga. LEXIS 113 (2014) (decided under former O.C.G.A. § 24-3-5).

## 4. Pendency of Criminal Project

### a. In General

**Telephone calls in furtherance of conspiracy.** — Trial court did not err when the court admitted the transcripts of phone calls between the defendant and the co-conspirators because such evidence did not constitute hearsay as the statements fell under the exception to the hearsay rule under O.C.G.A. § 24-8-801(d)(2)(E) given that the statements over the telephone were made in furtherance of the conspiracy. *Hernandez-Garcia v. State*, 322 Ga. App. 455, 745 S.E.2d 706 (2013).

## 24-8-803. Hearsay rule exceptions; availability of declarant immaterial.

**Law reviews.** — For article, "Symposium on Evidence Reform: The Curious Case of Differing Literary Emphases: The Contrast Between the Use of Scientific

Publications at Pretrial Daubert Hearings and at Trial," see 47 Ga. L. Rev. 837 (2013). For annual survey on evidence, see 65 Mercer L. Rev. 125 (2013).

## JUDICIAL DECISIONS

### ANALYSIS

RES GESTAE; PRESENT SENSE IMPRESSION AND EXCITED UTTERANCE

#### 6. APPLICATION AND EXAMPLES

##### i. CRIMINAL LAW — VICTIMS

BUSINESS RECORDS

#### 3. APPLICATIONS AND ILLUSTRATIONS

## **Res Gestae; Present Sense Impression and Excited Utterance**

### **6. Application and Examples**

#### **i. Criminal Law — Victims**

#### **Statement shortly after crime occurred.**

Because the victim's statements to the homeowner's daughter and the emergency medical technician (EMT) were made shortly after the rape occurred and were admissible as part of the *res gestae*, any objection to the testimony of the homeowner's daughter and the EMT regarding what the victim said to them would have been futile and could not provide the basis for an ineffective assistance claim. *Miller v. State*, 325 Ga. App. 764, 754 S.E.2d 804 (2014) (decided under former O.C.G.A. § 24-3-3).

#### **Testimony of officer.**

Pretermitted whether the testimony of the sheriff's deputy and police investigator fell within the *res gestae* exception to hearsay, because the defendant could not show any prejudice resulting from the admission of the testimony in light of the properly admitted testimony of the homeowner's daughter and emergency medical technician, the failure to object to evidence which was merely cumulative of other admissible evidence did not amount

to ineffective assistance of counsel. *Miller v. State*, 325 Ga. App. 764, 754 S.E.2d 804 (2014) (decided under former O.C.G.A. § 24-3-3).

#### **Business Records**

### **3. Applications and Illustrations**

**Records of debtor's account.** — In a creditor's action on open account, the creditor's business records showing the debtor's account and bank records showing wire transfers made by the debtor were sufficient under O.C.G.A. § 24-8-803(6) to support its contention that it was entitled to summary judgment as to the debtor's liability; because of inconsistencies, however, further proceedings were required to determine the amount the debtor owed. *SKC, Inc. v. eMag Solutions, LLC*, 755 S.E.2d 298, 2014 Ga. App. LEXIS 160 (2014).

#### **Credit agreement and statements.**

Trial court did not err by allowing into evidence as business records two spreadsheets regarding the alleged transactions supporting the defendant's convictions for theft by taking because the documents were created as part of the ordinary course of business and a proper foundation was laid for their admission. *Raymond v. State*, 322 Ga. App. 404, 745 S.E.2d 689 (2013) (decided under former O.C.G.A. § 24-3-14).

## **24-8-807. Residual exception.**

### **JUDICIAL DECISIONS**

#### **Admission of necessity.**

Testimony of the victim's sons and a coworker as to the statements the victim made regarding the victim's relationship with the defendant were admissible under the necessity exception to the hearsay rule as the victim enjoyed a close relationship with the victim's sons and routinely discussed personal issues with the coworker, and the statements were the only evidence of the victim's longstanding intention to leave the defendant. *Faircloth v. State*, 293 Ga. 134, 744 S.E.2d 52 (2013).

Trial court did not err by admitting the testimony of the victim's wife under the necessity exception of O.C.G.A.

§ 24-8-807 as defense counsel was permitted to recross-examine the witness to challenge the reliability of the victim's out-of-court statement and even if it were error to have admitted the wife's testimony concerning the victim's out-of-court statement about a previous fight with the defendant over a drug debt, the Supreme Court of Georgia found that it was highly probable that the error did not contribute to the judgment since it was merely cumulative of other evidence. *Bullock v. State*, 293 Ga. 179, 744 S.E.2d 763 (2013).

#### **Statements of deceased witness admitted.**

Under former O.C.G.A. § 24-3-1, testi-

mony by the victim's husband about a conversation with the victim just prior to the crime was admissible because the victim was deceased, the statements about who was present in the store immediately before the victim's death were relevant, and the statement was trustworthy, having been made to the victim's husband, with whom the victim often spoke daily about matters at the store. *Johnson v. State*, 294 Ga. 86, 750 S.E.2d 347 (2013) (decided under former O.C.G.A. § 24-3-1).

**Requirements of necessity and guaranty of trustworthiness satisfied.**

Trial court did not err in allowing the victim's cousin and the cousin's girlfriend

to testify at trial about prior difficulties between the victim and the defendant pursuant to the necessity exception to the rule excluding hearsay, and the testimony did not violate the defendant's right to confrontation, because the trial court concluded the proffered testimony of the witnesses was reliable and trustworthy as it found the victim was like a sibling to the witnesses, and because any alleged harm from the admission of that testimony was mitigated by the fact that both witnesses testified the victim and the defendant continued to be friends in spite of their prior difficulties. *Thompson v. State*, 294 Ga. 693, 755 S.E.2d 713 (2014) (decided under former O.C.G.A. § 24-3-1(b)).

## ARTICLE 2

### ADMISSIONS AND CONFESSIONS

#### 24-8-820. Testimony as to child's description of sexual contact or physical abuse.

**Law reviews.** — For article, "Appeal and Error: Appeal or Certiorari by State

in Criminal Cases," see 30 Ga. St. U.L. Rev. 17 (2013).

#### 24-8-821. Admissions in pleadings.

### JUDICIAL DECISIONS

**Admissions of fact in the pleadings can always be taken advantage of, etc.**

Mesothelioma plaintiff's allegations in the plaintiff's complaint that the plaintiff was exposed to asbestos manufactured or distributed by numerous companies were admissible as admissions in *judicio* under O.C.G.A. § 24-8-821, even when withdrawn, and the manufacturers remaining in the suit could use these admissions as evidence that fault should be apportioned. *Georgia-Pacific, LLC v. Fields*, 293 Ga. 499, 748 S.E.2d 407 (2013).

**Rule only applies to factual admissions.**

Doctor's withdrawn admission that the

doctor executed the guaranty did not create a genuine issue of material fact as to whether the doctor was personally bound by it as the doctor's withdrawn admission that the doctor guaranteed payment of all sums owing under the lease was only an opinion or conclusion as to the legal effect of that instrument and could not be used to the lessor's advantage. *Citrus Tower Blvd. Imaging Ctr. v. David S. Owens, MD, PC*, 325 Ga. App. 1, 752 S.E.2d 74 (2013).

**Cited in** *Powder Springs Holdings, LLC v. RL BB ACQ II-GA PSH, LLC*, 325 Ga. App. 694, 754 S.E.2d 655 (2014).

## 24-8-824. Only voluntary confessions admissible.

### JUDICIAL DECISIONS

#### ANALYSIS

#### VOLUNTARINESS

##### Voluntariness

**Hope of benefit not created by explanation of consecutive and concurrent sentences.** — Trial court did not err in denying the defendant's motion to exclude the defendant's statement as being induced by hope of benefit because the investigator's explanation of consecutive versus concurrent sentences and the options available to the district attorney's office merely emphasized the seriousness of the charges and amounted to no more than a permissible admonition to tell the truth. *Lane v. State*, 324 Ga. App. 303, 750 S.E.2d 381 (2013).

##### **Hope of benefit not created.**

Defendant's motion to suppress several statements made to the investigators was properly denied because the assurances made to the defendant, that the defendant could go home if the defendant told the truth and that investigators had no intention of charging the defendant, did not amount to a "hope of benefit" rendering the statements involuntary. *Edenfield v. State*, 293 Ga. 370, 744 S.E.2d 738 (2013) (decided under former O.C.G.A. §§ 24-3-50 and 24-3-51).

Trial court erred in suppressing the defendant's custodial statement pursuant to former O.C.G.A. § 24-3-50 because it was not induced by a "hope of benefit" promised from the state; the defendant's statement was not actually induced by a belief that the defendant would not be charged with forcible rape, not be thrown in jail, and not have to register as a sex offender if the defendant confessed to having sex with the victim. *State v. Munoz*, 324 Ga. App. 386, 749 S.E.2d 48 (2013) (decided under former O.C.G.A. § 24-3-50).

Officer did not improperly induce the defendant's custodial statement when, in response to the defendant's plea to "help me out," the detective stated: "All right. What I've got to do before I can talk to you

is read you your rights, OK?" This statement was not a promise that rendered the defendant's statement involuntary under O.C.G.A. § 24-8-824. *Wilson v. State*, 293 Ga. 508, 748 S.E.2d 385 (2013).

In defendant's felony murder trial, the defendant's statement to police was admissible because the sheriff's statement that no one was going to come after the defendant for getting rid of a dead body the defendant found in the defendant's home and that the most the defendant could be charged with would be disposing of a body was merely an exhortation to tell the truth and not a promise of benefit under O.C.G.A. § 24-8-824. *Currier v. State*, 294 Ga. 392, 754 S.E.2d 17 (2014).

##### **Statements neither coerced nor hope induced.**

Trial court did not err in admitting the defendant's statements because the statements were voluntary as the officer did not tell the defendant that the defendant could not leave until the officer heard what the officer wanted, and the detective's statements that the defendant's friend and mother could be arrested if the evidence showed they were involved in the crime were mere truisms or recounting of facts rather than a threat of injury or promise of benefit. *Moore v. State*, 325 Ga. App. 749, 754 S.E.2d 792 (2014) (decided under former O.C.G.A. § 24-3-50).

##### **Hope of lighter punishment, induced by other person, is usually "hope of benefit", etc.**

Trial court did not err in finding that a portion of the defendant's police interview was inadmissible because it was induced by an officer's statement that "the person that cooperates is the person that gets help," made after the defendant and two accomplices were arrested, and the statement indicated that if the defendant cooperated truthfully, the defendant would get a lighter sentence than the accomplices. *State v. Robinson*, 755 S.E.2d 869, 2014 Ga. App. LEXIS 118 (2014).

CHAPTER 10

BEST EVIDENCE RULE

24-10-1001. Definitions.

**Law reviews.** — For article, “The Best Evidence Rule Made Better: A Glimpse into Georgia’s New Evidence Code,” see 19 Ga. St. B.J. 12 (Aug. 2013).

24-10-1002. Requirement of original.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

**Transcript of on-line conversations.** — With regard to the defendant’s conviction for criminal attempt to commit child molestation and related crimes, the trial court did not err in admitting into evidence transcripts of all of the online conversations between the defendant and a detective, posing as the 15-year-old victim, because the detective testified that the detective participated in all of the online conversations with the defendant;

that the detective created the transcripts by copying the text exactly as the text appeared on the computer screen, without making any additions, omissions, or other alterations to that text; and that the transcript reflected the exact words used in the conversation, as well as the online names used by the persons who typed those words, which was sufficient to authenticate the transcript. *Castaneira v. State*, 321 Ga. App. 418, 740 S.E.2d 400 (2013).

24-10-1003. Admissibility of duplicates.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

1. IN GENERAL

Application

1. In General

**Transcript of online conversations.** — With regard to the defendant’s conviction for criminal attempt to commit child molestation and related crimes, the trial court did not err in admitting into evidence transcripts of all of the online conversations between the defendant and a detective, posing as the 15-year-old victim, because the detective testified that the detective participated in all of the

online conversations with the defendant; that the detective created the transcripts by copying the text exactly as the text appeared on the computer screen, without making any additions, omissions, or other alterations to that text; and that the transcript reflected the exact words used in the conversation, as well as the online names used by the persons who typed those words, which was sufficient to authenticate the transcript. *Castaneira v. State*, 321 Ga. App. 418, 740 S.E.2d 400 (2013).

**CHAPTER 12****MEDICAL AND OTHER CONFIDENTIAL INFORMATION****Article 3****AIDS Information**

Sec.

24-12-21. Disclosure of AIDS confidential information.

**ARTICLE 1****RELEASE OF MEDICAL INFORMATION AND  
CONFIDENTIALITY OF RAW RESEARCH DATA**

**24-12-1. When medical information may be released by physician, hospital, health care facility, or pharmacist; immunity from liability; waiver of privilege; psychiatrists and hospitals excepted.**

**JUDICIAL DECISIONS**

**Defendant placed mental state in issue.** — Trial court did not err when the court denied a motion in limine and allowed a psychiatrist who examined the defendant in jail to testify because the defendant placed the defendant's mental capacity in issue when the defendant filed a notice of intent to pursue a defense of

not guilty by reason of insanity, which constituted a waiver of any state constitutional right of privacy or statutory privilege in the defendant's mental health records. *Armstead v. State*, 293 Ga. 243, 744 S.E.2d 774 (2013) (decided under former O.C.G.A. 24-9-40).

**ARTICLE 3****AIDS INFORMATION**

**24-12-21. Disclosure of AIDS confidential information.**

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) Except as otherwise provided in this Code section:

(1) No person or legal entity which receives AIDS confidential information pursuant to this Code section or which is responsible for recording, reporting, or maintaining AIDS confidential information shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity; and

(2) No person or legal entity which receives AIDS confidential information which that person or legal entity knows was disclosed in violation of paragraph (1) of this subsection shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity.

(c) AIDS confidential information shall be disclosed to the person identified by that information or, if that person is a minor or incompetent person, to that person's parent or legal guardian.

(d) AIDS confidential information shall be disclosed to any person or legal entity designated to receive that information when that designation is made in writing by the person identified by that information or, if that person is a minor or incompetent person, by that person's parent or legal guardian.

(e) AIDS confidential information shall be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if that information is authorized or required by law to be reported to that agency or department.

(f) The results of an HIV test shall be disclosed to the person, or that person's designated representative, who ordered such tests of the body fluids or tissue of another person.

(g) When the patient of a physician has been determined to be infected with HIV and that patient's physician reasonably believes that the spouse or sexual partner or any child of the patient, spouse, or sexual partner is a person at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient has been determined to be infected with HIV, after first attempting to notify the patient that such disclosure is going to be made.

(h)(1) An administrator of an institution licensed as a hospital by the Department of Community Health or a physician having a patient who has been determined to be infected with HIV may disclose to the Department of Public Health:

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and

(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.

(2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to the Department of Public Health is determined by that department to be reasonably necessary, that department shall establish by regulation a date on and after which such reporting shall be required. On and after the date so established, each health care provider, health care facility, or any other person or legal entity which orders an HIV test for another person shall report to the Department of Public Health the name and address of any person thereby determined to be infected with HIV. No such report shall be made regarding any confirmed positive HIV test provided at any anonymous HIV test site operated by or on behalf of the Department of Public Health.

(3) The Department of Public Health may disclose that a person has been reported, under paragraph (1) or (2) of this subsection, to have been determined to be infected with HIV to the board of health of the county in which that person resides or is located if reasonably necessary to protect the health and safety of that person or other persons who may have come in contact with the body fluids of the HIV infected person. The Department of Public Health or county board of health to which information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this subsection:

(A) May contact any person named in such disclosure as having been determined to be an HIV infected person for the purpose of counseling that person and requesting therefrom the name of any other person who may be a person at risk of being infected with HIV by that HIV infected person;

(B) May contact any other person reasonably believed to be a person at risk of being infected with HIV by that HIV infected person for the purposes of disclosing that such infected person has been determined to be infected with HIV and counseling such person to submit to an HIV test; and

(C) Shall contact and provide counseling to the spouse of any HIV infected person whose name is thus disclosed if both persons are reasonably likely to have engaged in sexual intercourse or any other act determined by the Department of Public Health likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty.

(h.1) The Department of Public Health may disclose AIDS confidential information regarding a person who has been reported, under

paragraph (1) or (2) of subsection (h), to be infected with HIV to a health care provider licensed pursuant to Chapter 11, 26, or 34 of Title 43 whom that person has consulted for medical treatment or advice.

(i) Any health care provider authorized to order an HIV test may disclose AIDS confidential information regarding a patient thereof if that disclosure is made to a health care provider or health care facility which has provided, is providing, or will provide any health care service to that patient and as a result of such provision of service that health care provider or facility:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(j) A health care provider or any other person or legal entity authorized but not required to disclose AIDS confidential information pursuant to this Code section shall have no duty to make such disclosure and shall not be liable to the patient or any other person or legal entity for failing to make such disclosure. A health care provider or any other person or legal entity which discloses information as authorized or required by this Code section or as authorized or required by law or rules or regulations made pursuant thereto shall have no civil or criminal liability therefor.

(k) When any person or legal entity is authorized or required by this Code section or any other law to disclose AIDS confidential information to a person at risk of being infected with HIV and that person at risk is a minor or incompetent person, such disclosure may be made to any parent or legal guardian of the minor or incompetent person, to the minor or incompetent person, or to both the minor or incompetent person and any parent or legal guardian thereof.

(l) When an institutional care facility is the site at which a person is at risk of being infected with HIV and as a result of that risk a disclosure of AIDS confidential information to any person at risk at that site is authorized or required under this Code section or any other law, such disclosure may be made to the person at risk or to that institutional care facility's chief administrative or executive officer, or such officer's designee, in which case that officer or designee shall be authorized to make such disclosure to the person at risk.

(m) When a disclosure of AIDS confidential information is authorized or required by this Code section to be made to a physician, health care provider, or legal entity, that disclosure may be made to employees of

that physician, health care provider, or legal entity who have been designated thereby to receive such information on behalf thereof. Those designated employees may thereafter disclose to and provide for the disclosure of that information among such other employees of that physician, health care provider, or legal entity, but such disclosures among those employees shall only be authorized when reasonably necessary in the ordinary course of business to carry out the purposes for which that disclosure is authorized or required to be made to that physician, health care provider, or legal entity.

(n) Any disclosure of AIDS confidential information authorized or required by this Code section or any other law and any unauthorized disclosure of such information shall in no way destroy the confidential nature of that information except for the purpose for which the authorized or required disclosure is made.

(o) Any person or legal entity which violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(p) Nothing in this Code section or any other law shall be construed to authorize the disclosure of AIDS confidential information if that disclosure is prohibited by federal law, or regulations promulgated thereunder, nor shall anything in this Code section or any other law be construed to prohibit the disclosure of information which would be AIDS confidential information except that such information does not permit the identification of any person.

(q) A public safety agency or prosecuting attorney may obtain the results from an HIV test to which the person named in the request has submitted under Code Section 15-11-603, 17-10-15, 42-5-52.1, or 42-9-42.1, notwithstanding that the results may be contained in a sealed record.

(r) Any person or legal entity required by an order of a court to disclose AIDS confidential information in the custody or control of such person or legal entity shall disclose that information as required by that order.

(s) AIDS confidential information shall be disclosed as medical information pursuant to Code Section 24-12-1 or pursuant to any other law which authorizes or requires the disclosure of medical information if:

(1) The person identified by that information:

(A) Has consented in writing to that disclosure; or

(B) Has been notified of the request for disclosure of that information at least ten days prior to the time the disclosure is to be made and does not object to such disclosure prior to the time specified for that disclosure in that notice; or

(2) A superior court in an in camera hearing finds by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this paragraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal.

(t)(1) A superior court of this state may order a person or legal entity to disclose AIDS confidential information in its custody or control to:

(A) A prosecutor in connection with a prosecution for the alleged commission of reckless conduct under subsection (c) of Code Section 16-5-60;

(B) Any party in a civil proceeding; or

(C) A public safety agency or the Department of Public Health if that agency or department has an employee thereof who has, in the course of that employment, come in contact with the body fluids of the person identified by the AIDS confidential information sought in such a manner reasonably likely to cause that employee to become an HIV infected person and provided the disclosure is necessary for the health and safety of that employee,

and, for purposes of this subsection, the term “petitioner for disclosure” means any person or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

(2) An order may be issued against a person or legal entity responsible for recording, reporting, or maintaining AIDS confidential information to compel the disclosure of that information if the petitioner for disclosure demonstrates by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests.

(3) A petition seeking disclosure of AIDS confidential information under this subsection shall substitute a pseudonym for the true name of the person concerning whom the information is sought. The

disclosure to the parties of that person's true name shall be communicated confidentially, in documents not filed with the court.

(4) Before granting any order under this subsection, the court shall provide the person concerning whom the information is sought with notice and a reasonable opportunity to participate in the proceedings if that person is not already a party.

(5) Court proceedings as to disclosure of AIDS confidential information under this subsection shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court.

(6) Upon the issuance of an order that a person or legal entity be required to disclose AIDS confidential information regarding a person named in that order, that person or entity so ordered shall disclose to the ordering court any such information which is in the control or custody of that person or entity and which relates to the person named in the order for the court to make an in camera inspection thereof. If the court determines from that inspection that the person named in the order is an HIV infected person, the court shall disclose to the petitioner for disclosure that determination and shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(7) The record of the proceedings under this subsection shall be sealed by the court.

(8) An order may not be issued under this subsection against the Department of Public Health, any county board of health, or any anonymous HIV test site operated by or on behalf of that department.

(u) A health care provider, health care facility, or other person or legal entity who, in violation of this Code section, unintentionally discloses AIDS confidential information, notwithstanding the maintenance of procedures thereby which are reasonably adopted to avoid risk of such disclosure, shall not be civilly or criminally liable, unless such disclosure was due to gross negligence or wanton and willful misconduct.

(v) AIDS confidential information may be disclosed when that disclosure is otherwise authorized or required by Code Section 42-1-6, if AIDS or HIV infection is the communicable disease at issue, or when that disclosure is otherwise authorized or required by any law which specifically refers to "AIDS confidential information," "HIV test results," or any similar language indicating a legislative intent to disclose information specifically relating to AIDS or HIV.

(w) A health care provider who has received AIDS confidential information regarding a patient from the patient's health care provider directly or indirectly under the provisions of subsection (i) of this Code section may disclose that information to a health care provider which has provided, is providing, or will provide any health care service to that patient and as a result of that provision of service that health care provider:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(x) Neither the Department of Public Health nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by this Code section or any other law, except that such information in those records shall not be a public record and shall not be subject to disclosure through subpoena, court order, or other judicial process.

(y) The protection against disclosure provided by Code Section 24-12-20 shall be waived and AIDS confidential information may be disclosed to the extent that the person identified by such information, his or her heirs, successors, assigns, or a beneficiary of such person, including, but not limited to, an executor, administrator, or personal representative of such person's estate:

(1) Files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim;

(2) Places such person's care and treatment, the nature and extent of his or her injuries, the extent of his or her damages, his or her medical condition, or the reasons for his or her death at issue in any judicial proceeding; or

(3) Is involved in a dispute regarding coverage under any insurance policy or benefit plan.

(z) AIDS confidential information may be collected, used, and disclosed by an insurer in accordance with the provisions of Chapter 39 of Title 33.

(aa) In connection with any judicial proceeding in which AIDS confidential information is disclosed as authorized or required by this Code section, the party to whom that information is thereby disclosed may subpoena any person to authenticate such AIDS confidential

information, establish a chain of custody relating thereto, or otherwise testify regarding that information, including, but not limited to, testifying regarding any notifications to the patient regarding results of an HIV test. The provisions of this subsection shall apply to records, personnel, or both of the Department of Public Health or a county board of health notwithstanding Code Section 50-18-72, but only as to test results obtained by a prosecutor under subsection (q) of this Code section and to be used thereby in a prosecution for reckless conduct under subsection (c) of Code Section 16-5-60.

(bb) AIDS confidential information may be disclosed as a part of any proceeding or procedure authorized or required pursuant to Chapter 3, 4, or 7 of Title 37, regarding a person who is alleged to be or who is mentally ill, developmentally disabled, or alcoholic or drug dependent, or as a part of any proceeding or procedure authorized or required pursuant to Title 29, regarding the guardianship of a person or that person's estate, as follows:

(1) Any person who files or transmits a petition or other document which discloses AIDS confidential information in connection with any such proceeding or procedure shall provide a cover page which contains only the type of proceeding or procedure, the court in which the proceeding or procedure is or will be pending, and the words "CONFIDENTIAL INFORMATION" without in any way otherwise disclosing thereon the name of any individual or that such petition or other document specifically contains AIDS confidential information;

(2) AIDS confidential information shall only be disclosed pursuant to this subsection after disclosure to and with the written consent of the person identified by that information, or that person's parent or guardian if that person is a minor or has previously been adjudicated as being incompetent, or by order of court obtained in accordance with subparagraph (C) of paragraph (3) of this subsection;

(3) If any person files or transmits a petition or other document in connection with any such proceeding or procedure which discloses AIDS confidential information without obtaining consent as provided in paragraph (2) of this subsection, the court receiving such information shall either obtain written consent as set forth in that paragraph (2) for any further use or disclosure of such information or:

(A) Return such petition or other document to the person who filed or transmitted same, with directions against further filing or transmittal of such information in connection with such proceeding or procedure except in compliance with this subsection;

(B) Delete or expunge all references to such AIDS confidential information from the particular petition or other document; or

(C)(i) If the court determines there is a compelling need for such information in connection with the particular proceeding or

procedure, petition a superior court of competent jurisdiction for permission to obtain or disclose that information. If the person identified by the information is not yet represented by an attorney in the proceeding or procedure in connection with which the information is sought, the petitioning court shall appoint an attorney for such person. The petitioning court shall have both that person and that person's attorney personally served with notice of the petition and time and place of the superior court hearing thereon. Such hearing shall not be held sooner than 72 hours after service, unless the information is to be used in connection with an emergency guardianship proceeding under Code Section 29-4-14, in which event the hearing shall not be held sooner than 48 hours after service.

(ii) The superior court in which a petition is filed pursuant to division (i) of this subparagraph shall hold an in camera hearing on such petition. The purpose of the hearing shall be to determine whether there is clear and convincing evidence of a compelling need for the AIDS confidential information sought in connection with the particular proceeding or procedure which cannot be accommodated by other means. In assessing compelling need, the superior court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this subparagraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal; and

(4) The court having jurisdiction over such proceeding or procedure, when it becomes apparent that AIDS confidential information will likely be or has been disclosed in connection with such proceeding or procedure, shall take such measures as the court determines appropriate to preserve the confidentiality of the disclosed information to the maximum extent possible. Such measures shall include, without being limited to, closing the proceeding or procedure to the public and sealing all or any part of the records of the proceeding or procedure containing AIDS confidential information. The records of any appeals taken from any such proceeding or procedure shall also be sealed. Furthermore, the court may consult with and obtain the advice of medical experts or other counsel or advisers as to the relevance and materiality of such information in such proceedings or procedures, provided that the identity of the person identified by such information is not thereby revealed. (Code 1981, § 24-12-21, enacted

by Ga. L. 2011, p. 99, § 2/HB 24; Ga. L. 2012, p. 775, § 24/HB 942; Ga. L. 2013, p. 294, § 4-42/HB 242; Ga. L. 2014, p. 814, § 1/SB 342.)

The 2014 amendment, effective July 1, 2014, added subsection (h.1).

## CHAPTER 13

### SECURING ATTENDANCE OF WITNESSES AND PRODUCTION AND PRESERVATION OF EVIDENCE

#### ARTICLE 2

#### SUBPOENAS AND NOTICE TO PRODUCE

#### 24-13-23. Subpoena for production of documentary evidence; motion to quash or modify.

##### JUDICIAL DECISIONS

Cited in *Walker v. State*, 323 Ga. App. 558, 747 S.E.2d 51 (2013).

#### 24-13-25. Fees and mileage; when tender required.

##### JUDICIAL DECISIONS

##### **Tender of fee and mileage.**

While a witness fee and mileage expenses might not have been a prerequisite to the production of documents, the subpoena and letter served upon the Georgia Department of Corrections' legal counsel instructed that "you are hereby required to be and appear" and listed the docu-

ments and evidence the Department was to bring to the hearing. Thus, pursuant to former O.C.G.A. § 24-10-24, the attendant witness fee and mileage expense were required. *Williams v. Russo*, 322 Ga. App. 654, 745 S.E.2d 842 (2013) (decided under former O.C.G.A. § 24-10-24).

#### ARTICLE 4

### UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHOUT THE STATE

#### 24-13-90. Short title.

##### JUDICIAL DECISIONS

Cited in *Young v. State*, 324 Ga. App. 127, 749 S.E.2d 423 (2013).

**24-13-94. Criminal or grand jury proceeding in this state — Issuance of certificate; how long witness detained; punishment.**

**JUDICIAL DECISIONS**

**Witness not material.** — Trial court properly concluded that an out-of-state witness, who could have testified as to source codes for the breath testing device, was not “material” as the defendant presented no evidence mouth alcohol was present during a breath test such that an error message should have been generated that was not; the mere possibility that alcohol remained in the defendant’s mouth due to a surgical implant and retainer was not evidence pointing to actual existence of excess alcohol in the mouth. *Cronkite v. State*, 293 Ga. 476, 745 S.E.2d 591 (2013) (decided under former O.C.G.A. § 24-10-94).

**Out-of-state corporation.**

In 10 driving under the influence cases, because the defendants failed to present any evidence of facts supporting the existence of an error in their breath test results as required by case law, the trial court did not abuse the court’s discretion when the court determined that the defendants failed to show that the machine’s manufacturer was a material witness under the Uniform Act to Secure Attendance of an Out-of-State Witness, O.C.G.A. § 24-13-94(a). *Young v. State*, 324 Ga. App. 127, 749 S.E.2d 423 (2013).

**Continuance of case properly de-**

**nied.** — Trial court did not abuse the court’s discretion by denying the defendant’s request for a continuance because the court had granted a certificate pursuant to O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information and witnesses from the breathalyzer manufacturer set the case with enough time for the defense to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required the defendant to proceed to trial. *Phillips v. State*, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

**Full faith and credit given to out-of-state order.** — Trial court did not err by requiring defendant to proceed to trial without the source code and other requested information because it had granted a certificate pursuant to O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information from the manufacturer located in Kentucky, set the case with enough time to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required defendant to proceed to trial. *Phillips v. State*, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

## CHAPTER 14

## PROOF GENERALLY

## ARTICLE 1

## GENERAL PROVISIONS

**24-14-6. When conviction may be had on circumstantial evidence.**

## JUDICIAL DECISIONS

## ANALYSIS

## SUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE

**Sufficiency of Circumstantial Evidence****Evidence sufficient for possession with intent to distribute.**

Appellate court refused to disturb the jury's verdict convicting defendant of possession of drugs with the intent to distribute because after hearing the evidence and having the opportunity to judge the credibility of the witnesses, the jury properly concluded that the only reasonable hypothesis was that defendant possessed the drugs found hidden in the kitchen, despite defendant's argument that others had equal access. *King v. State*, 755 S.E.2d 22, 2014 Ga. App. LEXIS 74 (2014).

**Evidence insufficient for burglary conviction.**

Evidence was sufficient to convict defendant of the burglary of two residences where defendant's shoe prints and tire tracks were found; both tire tracks and shoe prints connected defendant to these burglaries, and defendant was caught by the police wearing the same shoes and driving the same car while in the process of participating in the burglary of a third residence, located near the first two residences. *Wise v. State*, 325 Ga. App. 377, 752 S.E.2d 628 (2013) (decided under former O.C.G.A. § 24-4-6).

**Malice murder.**

Evidence was sufficient to find the defendant guilty of the malice murder because the defendant and the victim had a domestic dispute over the money that the

defendant had borrowed from the victim; two days later, human body parts that were later identified as the victim's were found scattered around a secluded, wooded area near a house owned by the defendant; a coroner examined the remains and determined that the cause of death was homicide by unknown cause; the defendant never reported the victim missing; the defendant told conflicting stories about the victim's disappearance and the defendant's activities around that time; and the defendant towed the victim's car to a hotel parking lot and left the car. *Benson v. State*, 294 Ga. 618, 754 S.E.2d 23 (2014).

**Evidence sufficient to support conviction of trafficking in methamphetamine.**

Evidence was sufficient to convict the defendant of trafficking in methamphetamine because the defendant was in joint constructive possession of methamphetamine found under the seat of the vehicle the defendant was driving, and the jury was entitled to reject the defendant's alternative hypothesis that the defendant believed the defendant was simply delivering a vehicle to a motel as the jury could have found that, given the high street value of the methamphetamine, the defendant would not have been permitted to drive the vehicle alone to the motel unless the defendant was a trusted accomplice. *Garcia-Maldonado v. State*, 324 Ga. App. 518, 751 S.E.2d 149 (2013) (decided under former O.C.G.A. § 24-4-6).

**Evidence held sufficient to support conviction.**

Evidence presented was sufficient to authorize a rational jury to find that the state had excluded every reasonable hypothesis except that of appellant's guilt with regard to the felony murder of a two-year-old child left in appellant's care based on the child being healthy when left in appellant's care, died as the result of blunt force trauma to the head which could not have resulted from the normal activities of a child or a fall down the stairs, and appellant was alone with the child. *Alexander v. State*, 294 Ga. 345, 751 S.E.2d 408 (2013).

**Evidence sufficient for murder conviction.**

Circumstantial evidence, including that there was no evidence that the victim died from a cause other than asphyxia due to strangulation, the fact that the victim tested negative for drugs at the time of death, negating any theory about a lethal combination of alcohol and drugs, and the lack of evidence of forced entry to a room that the defendant and the victim shared was sufficient to support the defendant's murder conviction. *Simpson v. State*, 293 Ga. 131, 744 S.E.2d 49 (2013).

Circumstantial evidence was sufficient to convict the defendant of murder as the victim's daughter saw that the victim had about \$600 in the victim's wallet the day before the murder; after the murder, the victim's purse had no cash in it; the defendant's girlfriend identified the knife handle and blade found near the victim's body as the steak knife with a loosened handle that the girlfriend had used in cooking at the defendant's apartment; and the defendant admitted to another prisoner that the defendant stabbed the victim. *Bates v. State*, 293 Ga. 855, 750 S.E.2d 323 (2013).

**Evidence sufficient for felony murder conviction.**

Circumstantial evidence was sufficient to convict the defendant of felony murder predicated upon aggravated assault because the evidence at the crime scene showed there had been a struggle; the victim's injuries were consistent with strangulation; male DNA taken from the victim's body was later matched to the defendant's DNA; no other male DNA was found in the samples taken from the victim's body; and the state excluded all reasonable hypotheses except that of the defendant's guilt. *Reeves v. State*, 294 Ga. 673, 755 S.E.2d 695 (2014) (decided under former O.C.G.A. § 24-4-6).

**24-14-8. Number of witnesses required generally; exceptions; effect of corroboration.**

**JUDICIAL DECISIONS**

**ANALYSIS**

**GENERAL CONSIDERATION**

**SUFFICIENCY OF CORROBORATING EVIDENCE**

**JURY**

**General Consideration**

**Victim's testimony sufficient.**

Evidence from a victim that the defendant robbed the victim of cash, cell phones, and a GPS unit at knifepoint was sufficient pursuant to O.C.G.A. § 24-14-8 to establish that the defendant committed armed robbery with a knife in violation of O.C.G.A. §§ 16-8-41(a) and 16-11-106(b)(1), although the defendant testified that the victim gave the defendant these items for drugs. *Sanders v.*

*State*, 324 Ga. App. 4, 749 S.E.2d 14 (2013).

Evidence was sufficient to convict the defendant of three counts of aggravated assault, one count of burglary, and several firearms charges because: (1) both victims testified that the defendant was their assailant; and (2) the victims' testimony alone was sufficient to authorize a rational trier of fact to find the defendant guilty beyond a reasonable doubt of the charged offenses. *Smith v. State*, 325 Ga.

### General Consideration (Cont'd)

App. 739, 754 S.E.2d 783 (2014) (decided under former O.C.G.A. § 24-4-8).

Evidence was sufficient to convict the defendant of rape because the victim testified that the defendant forced the victim to have vaginal intercourse with the defendant against the victim's will; the victim's testimony, standing alone, was sufficient to sustain the conviction; and testing showed that DNA found on the swabs taken from the victim as part of the sexual assault kit matched the defendant's DNA profile. *Miller v. State*, 325 Ga. App. 764, 754 S.E.2d 804 (2014) (decided under former O.C.G.A. § 24-4-8).

**Cited in** *Stephens v. State*, 323 Ga. App. 699, 747 S.E.2d 711 (2013).

### Sufficiency of Corroborating Evidence

**Corroboration by other accomplices.** — Evidence was sufficient to convict the defendant of murder as the defendant used a knife to stab the victim in the neck; a jailhouse informant testified that the defendant had admitted that the defendant and a juvenile had beat the victim with a pan, strangled the victim with a belt, and stabbed the victim in the neck; and, even if the supreme court were to assume that the only evidence of the defendant's guilt was the testimony of accomplices, because more than one accomplice testified at trial, the testimony of one accomplice could be corroborated by the testimony of the others. *Ramirez v. State*, 294 Ga. 440, 754 S.E.2d 325 (2014) (decided under former O.C.G.A. § 24-4-8).

### Connection of defendant with crime.

Trial court did not err by denying the defendant's motion for a new trial based on the defendant's contention that the evidence was insufficient to corroborate the accomplice testimony implicating the defendant in the robbery because the testimony of the victim identified the defendant as the perpetrator and was sufficient corroboration of the accomplice's testimony. *Vann v. State*, 322 Ga. App. 148, 742 S.E.2d 767 (2013).

With regard to the defendant's murder conviction, the defendant's contention on

appeal that the accomplice testimony used to convict was not corroborated was found meritless because there was slight evidence from an extraneous source identifying the defendant as a participant in the crime; specifically, authorities found the defendant's blood and palm print on the car used during the crime which evidence corroborated the accomplice's testimony that the defendant was injured on the broken glass of the window the men used to gain entry to the victim's house. *Lewis v. State*, 293 Ga. 110, 744 S.E.2d 21 (2013).

With regard to the defendant's robbery conviction, contrary to the defendant's contention that the testimony of an accomplice was uncorroborated and thus insufficient to support the conviction, there was no conflict in the testimony that the defendant was a participant; thus, the corroborating evidence was more than slight and was sufficient to authorize the jury to find that the accomplice's testimony was corroborated. *Carter v. State*, 324 Ga. App. 118, 749 S.E.2d 404 (2013).

Sufficient evidence supported the defendant's conviction for armed robbery based on the victim identifying the defendant as the person who hit the victim on the head, an accomplice's testimony, the victim's car keys were found in a bag that the defendant had been holding when stopped by an officer, and the defendant fled from the officers when the officers attempted to arrest. *Brooks v. State*, 323 Ga. App. 681, 747 S.E.2d 688 (2013).

### Testimony of other witnesses sufficient.

Evidence was sufficient to support the defendant's convictions as the getaway driver's testimony about the heights of the defendant and the codefendant was consistent with the gas station clerk's comparison of their heights, and there was evidence that the defendant, who had no job, was spending significant amounts of money on cars and expensive clothing. *Harrell v. State*, 322 Ga. App. 115, 744 S.E.2d 105 (2013) (decided under former O.C.G.A. § 24-4-8).

Defense counsel was not ineffective for failing to request a charge on accomplice corroboration because the accomplice was not the only witness; thus, there was no

error in failing to give the accomplice corroboration charge since the state relied on other evidence apart from the accomplice's testimony. *Lane v. State*, 324 Ga. App. 303, 750 S.E.2d 381 (2013).

In a case decided under former O.C.G.A. § 24-4-8, the testimony of an accomplice implicating the defendant was corroborated by evidence that the defendant believed the victim stole the defendant's cocaine, witnesses identified the defendant as being involved in dragging a man into a vehicle, and the victim's blood was found in the defendant's sister's basement. *McKibbins v. State*, 293 Ga. 843, 750 S.E.2d 314 (2013) (decided under former O.C.G.A. § 24-4-8).

**Circumstantial evidence presented at trial sufficient to corroborate testimony of accomplice.**

Sufficient corroborating evidence enabled the jury to conclude that the defendant was a party to the robbery based on testimony that the defendant and an accomplice met before and immediately following the robbery, defendant's own testimony of being in the drug business, cellular phone records indicating the defendant was in the vicinity of the robbery when the robbery occurred, eyewitness testimony, and evidence that the defendant sent the amount of money taken from the victim to another. *Jackson v. State*, 294 Ga. 34, 751 S.E.2d 63 (2013).

**There was adequate corroboration.**

Evidence that the defendant was linked to the getaway vehicle, and that the defendant was present the next morning at a hotel with the vehicle, the co-indictee, the first defendant, the marijuana, and the

cash was sufficient corroborating evidence to support the defendant's convictions for felony murder and other crimes related to the armed robbery of the four victims and the subsequent shootings that killed the first victim and injured the second victim. *Cowart v. State*, 294 Ga. 333, 751 S.E.2d 399 (2013).

Evidence sufficiently corroborated the victim's testimony that the defendant, along with the three co-defendants, kidnapped the victim for ransom because the proprietor of a business located in the same strip mall as the victim's clothing store saw the victim being forcibly taken away; on conversations monitored from one of the co-defendant's telephones, the victim was overheard pleading that the defendants not kill the victim; the victim was overheard asking the victim's family for money; after an investigatory stop, the defendant was found in the back seat, along with the victim and a hidden gun; and the victim stated that the victim's life had been threatened. *Deleon-Alvarez v. State*, 324 Ga. App. 694, 751 S.E.2d 497 (2013).

**Jury**

**Charge on corroboration required.**

— Because there was evidence to support a finding that the witness was an accomplice, the trial court erred, pursuant to former O.C.G.A. § 24-4-8, in refusing to give the defendant's requested instruction on the need for corroboration of an accomplice's testimony. *Hamm v. State*, 294 Ga. 791, 2014 Ga. LEXIS 222 (2014) (decided under former O.C.G.A. § 24-4-8).

ARTICLE 2

PRESUMPTIONS AND ESTOPPEL

24-14-29. Equitable estoppel.

JUDICIAL DECISIONS

ANALYSIS

ILLUSTRATIONS

Illustrations

**Equitable estoppel defense not available to defending trustee in action at law.** — In a trust administration dispute, the trial court’s ruling that a trustee’s attempt to rely on the equitable defenses of unclean hands, laches, and

equitable estoppel failed was proper because the challenging beneficiary filed an action at law against the trustee seeking only money damages; thus, because it was an action at law, the equitable defenses of laches and unclean hands had no application to the case. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).







